

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

| | | |
|-------------------------------|---|------------------|
| COPELAND COMMUNICATIONS, LLC, | } | |
| d/b/a COPELAND MONTGOMERY, | } | |
| | } | |
| Plaintiff, | } | CIVIL ACTION NO. |
| | } | 08-AR-1084-S |
| v. | } | |
| | } | |
| DOYLE RESTAURANT GROUP, INC., | } | |
| et al., | } | |
| | } | |
| Defendants. | } | |

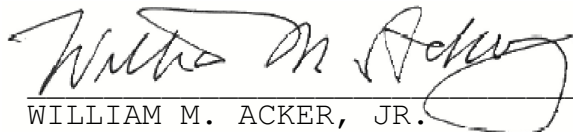
MEMORANDUM OPINION

Plaintiff's motion to remand was orally argued at this court's regular motion docket on July 18, 2008. Several possible fatal jurisdictional defects were discussed, including the fact that the first served defendant admittedly did not remove within (30) thirty days after being served while the case was removable under 28 U.S.C. § 1332. In other words, the removing defendants necessarily rely upon an alleged right to remove after the last served defendant was served, even though the case was clearly removable by the first served defendant when served. After learning that this court, while acknowledging the existence of a difference of opinion among district courts on the subject, subscribes to the "first served defendant" rule, and will continue to do so unless and until the Eleventh Circuit or the Supreme Court holds otherwise, the defendants orally conceded that if the "first served defendant" rule is applied, plaintiff's motion to remand is due to be granted. Applying the rule, as the

court will, obviates any need to discuss the other alleged defects in the removal.

A separate order of remand will be entered.

DONE this 22nd day of July, 2008.


WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE